

**Illinois Department of Revenue
Regulations**

Title 86 Part 150 Section 150.306 Interim Use and Demonstration Exemptions

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 150
USE TAX**

Section 150.306 Interim Use and Demonstration Exemptions

a) Interim Use Exemption

1) Except as otherwise provided in this subsection (a) and in subsection (c) of this Section, tangible personal property purchased by a retailer for resale, and used by the retailer or his or her agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is of the same general type of property sold by that retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period. Beginning July 1, 2008, the following provisions apply to persons claiming the interim use exemption:

A) The interim use exemption may not be claimed for any item if any of the following circumstances exist:

- i) title to the item is held by any party other than the retailer, except that title may be held by the retailer, the manufacturer of the item, or a captive finance company;
- ii) the retailer elects to claim an Internal Revenue Code section 179 deduction on the item as a depreciable business asset; or
- iii) if the item is leased by the retailer, the aggregate gross receipts received from all leasing of the item by the retailer exceeds the retailer's selling price of the item.

B) Safe Harbor Rule. For items that are not excluded from the exemption under subsection (a)(1)(A), interim use will be deemed to occur if the retailer satisfies all of requirements of subsections (a)(1)(B)(i) through (vi):

- i) The item is one of the following:
 - listed in the retailer's records as part of inventory;
 - not depreciated by the retailer under Internal Revenue Code section 167; or

- otherwise shown by the retailer's records, documents, or operations as available for sale during the interim use period.
 - ii) The period of use or lease of the item by the retailer is less than 24 months.
 - iii) The item is of the same general type of property sold by the retailer.
 - iv) The item is ultimately sold by the retailer.
 - v) If the retailer receives revenues from the lease of the same general type of property as the item for which interim use is claimed, then the annual total of such lease revenues must be less than the annual total of the sales revenues received from the property.
 - vi) If the item is leased under a lease agreement for more than 30 days, the lease agreement must contain a provision that, if the retailer locates a buyer for the item, the lease may be terminated within 7 days or the lessee may receive comparable property substituted by the retailer for the item within 7 days.
- C) If the item is not excluded from the exemption under subsection (a)(1)(A) and does not fall under the safe harbor provisions of subsection (a)(1)(B) and, if the item is leased, the retailer is primarily a retailer as provided by subsection (a)(3), then the Department shall review all applicable and available facts to determine if the interim use exemption applies, including, but not limited to:
- i) The retail sales history or records of the type of items in question.
 - ii) Inventory records.
 - iii) Advertising of the item and, if the item is a vehicle, any advertisements on the vehicle and at the location of the vehicle.
 - iv) Manufacturer's contract terms, conditions, discounts and rebates.
 - v) Length and location of use or lease prior to sale.
 - vi) Whether depreciation under Internal Revenue Code section 167 was taken by the retailer.
 - vii) Ownership and control documents, including but not limited to books, records, titles and insurance documents.
 - viii) If the item is leased, whether the contracts signed by lessee indicate the vehicle is available for recall, substitution allowance and sale during the lease period.

- D) For purposes of this subsection (a)(1), the term "captive finance company" means a wholly owned subsidiary of a manufacturing company that finances wholesale or retail purchases from that manufacturing company.
- 2) To the extent provided by and limited under subsections (a) and (c), the leasing of tangible personal property by persons who are primarily engaged in the business of selling such property at retail is within the interim use exemption if the property is available for sale during the lease period. Except as to motor vehicles described in subsection (a)(4), the interim use exemption is not available to persons who purchase tangible personal property with the intent to engage in the business of leasing that property and who sell the property only as an incident to their leasing activity. Persons who are primarily engaged in the business of leasing motor vehicles may not claim an interim use exemption when purchasing motor vehicles for use in their business even though the lessors are subject to Retailers' Occupation Tax on the sale of used motor vehicles pursuant to 35 ILCS 120/1c. Motor vehicles of the first division, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146], are exempt from Use Tax if the vehicles purchased are to be rented under lease terms of one year or less. (See 35 ILCS 105/3-5(10).)
- 3) In determining whether a taxpayer is "primarily" a retailer, the Department will examine only the activities of his Illinois operations. In addition, the Department will examine the activities of divisions of a corporate entity that are not separately registered with the Department. If divisions of a corporate entity are separately registered, however, their activities will not be examined in making this determination.
- 4) To the extent provided by and limited under subsection (a), the leasing of motor vehicles by motor vehicle dealers is within the interim use exemption if the leased motor vehicles are available for sale during the lease period. For example, many times motor vehicle dealers enter into leases of motor vehicles with lessees and simultaneously sell both those motor vehicles and leases to third parties. If a motor vehicle dealer enters into a lease of a motor vehicle with a lessee and simultaneously sells that motor vehicle to a third party, the interim use exemption is available to the dealer in regard to the purchase of the motor vehicle when it was purchased by the dealer for lease, provided that the motor vehicle is available for sale during the lease period. However, the dealer's sale of the motor vehicle, with or without the lease, to the third party is taxable and the third party incurs a Use Tax liability.
- 5) Until June 30, 2008, the leasing of motor vehicles by motor vehicle manufacturers to their employees is within the interim use exemption if the leased motor vehicles are carried as inventory on the books of the manufacturers or are otherwise available for sale during the lease period. Beginning on July 1, 2008 and thereafter, a manufacturer may claim the interim use exemption for tangible personal property leased to its employees, or otherwise used by its employees, only when the manufacturer is registered as a retailer and the use of that property would qualify under all of the requirements of this subsection (a) and subsection (c).

b) Demonstration Use Exemption

- 1) Except as provided in subsection (c), tangible personal property purchased for resale and used by its owner for demonstration purposes is not subject to Use Tax.
 - 2) The leasing of tangible personal property by a retailer to prospective buyers for the purpose of allowing them to ascertain whether the property suits their particular needs and for the purpose of trying to induce them to buy the property is a use for demonstration purposes, except as provided in subsection (c).
 - 3) The demonstration use exemption may not be claimed for tangible personal property purchased for resale that is consumed or destroyed in order to promote or demonstrate the product available for sale or is given away to a prospective customer as an inducement to make future purchases. For example, a retail grocer offering free samples of pizza to customers in his or her store in order to promote the sale of a new frozen pizza would not be able to claim a demonstration use exemption on his or her purchase price of the pizza consumed in the promotion.
 - 4) A vendor may not claim a demonstration use exemption on the use of a competing product, not available for sale by that vendor, even though the vendor uses the competing product to assist in the demonstration of the product he or she sells. Nor may a vendor claim a demonstration use exemption on ancillary items used in the demonstration of a product (i.e., a microwave used to heat the pizza samples in the above example). The demonstration use exemption is available only to a vendor of the product being demonstrated.
- c) **Aircraft and Watercraft**
For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay Use Tax on the original cost price of the aircraft or watercraft, and no credit for that tax is permitted if the aircraft or watercraft is subsequently sold by the retailer. For purposes of this Section, the term "watercraft" means a Class 2, Class 3 or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor.
- d) When the term "lease" is used in this Section, it is intended to also encompass the "rental" of tangible personal property.

(Source: Amended at 32 Ill. Reg. 17554, effective October 24, 2008)